

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ZACKARY T. HARRIS,

Plaintiff,

v.

BRENDEN BULLARD, et al.,

Defendants.

Case No. [19-cv-06648-HSG](#)

**ORDER DENYING THIRD REQUEST
FOR APPOINTMENT OF COUNSEL;
SUA SPONTE GRANTING FOURTH
EXTENSION OF TIME TO FILE
SECOND AMENDED COMPLAINT**

Re: Dkt. No. 26

Plaintiff, an inmate at Pelican Bay State Prison, has filed the instant *pro se* action pursuant to 42 U.S.C. § 1983. Plaintiff has recently filed a letter and declaration with the Court alleging that he has been denied access to his legal materials and the law library, and requesting appointment of counsel. Dkt. No. 26. For the reasons set forth below, the Court *sua sponte* GRANTS plaintiff an extension of time to **September 18, 2020**, to file his second amended complaint, and DENIES the request for appointment of counsel.

BACKGROUND

On January 21, 2020, the Court dismissed the amended complaint with leave to amend because the complaint suffered from numerous deficiencies. Dkt. No. 16. In response to plaintiff's complaints that he had been denied access to the law library and/or his legal materials, *see* Dkt. Nos. 17, 21, 24, the Court granted plaintiff multiple extensions of time to file his second amended complaint, *see* Dkt. Nos. 18, 23, 25. Plaintiff has also previously requested appointment of counsel. *See* Dkt. Nos. 15, 24. The Court has denied these requests for lack of exceptional circumstances. *See* Dkt. Nos. 16, 25.

DISCUSSION

In this recently filed letter and declaration, plaintiff alleges that he was denied access to his

1 legal materials (which he since appears to have received), and denied access to the law library and
 2 the courts. Dkt. No. 26. He also alleges that he has suffered mental and physical health issues;
 3 had his life threatened by other inmates; and is locked up 24 hours a day and escorted everywhere
 4 he goes. He requests appointment of counsel because of the restrictions on his movement and
 5 because he is mentally and physically exhausted from what he has endured these past months.
 6 Dkt. No. 26.

7 The Court *sua sponte* GRANTS plaintiff a fourth extension of time to **September 18,**
 8 **2020**, to file his second amended complaint.

9 The Court DENIES plaintiff's third request for appointment of counsel for lack of
 10 exceptional circumstances. As explained previously, the decision to request counsel to represent
 11 an indigent litigant under § 1915 is within "the sound discretion of the trial court and is granted
 12 only in exceptional circumstances." *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984). A
 13 finding of the "exceptional circumstances" of the plaintiff seeking assistance requires an
 14 evaluation of the likelihood of the plaintiff's success on the merits and an evaluation of the
 15 plaintiff's ability to articulate his claims *pro se* in light of the complexity of the legal issues
 16 involved. *See Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004).
 17 Both of these factors must be viewed together before reaching a decision on a request for counsel
 18 under § 1915. *See id.* The fact that the *pro se* litigant would be better served with the assistance
 19 of counsel does not necessarily qualify the issues involved as complex. *See Wilborn v.*
 20 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (that plaintiff may well have fared better with
 21 assistance of counsel not enough). The likelihood of plaintiff's success on the merits is unclear at
 22 this stage; and plaintiff has ably prosecuted this case thus far, filing multiple motions despite
 23 limited or no access to the law library and his materials. Plaintiff's motion requesting
 24 appointment of counsel is DENIED for lack of exceptional circumstances. Dkt. No. 26. This
 25 denial is without prejudice to the Court's *sua sponte* appointment of counsel at a future date
 26 should the circumstances of this case warrant such appointment.

27 CONCLUSION

28 For the reasons set forth above, the Court *sua sponte* GRANTS plaintiff an extension of

time to **September 18, 2020**, to file his second amended complaint, and DENIES the request for appointment of counsel. Dkt. No. 26.

This order terminates Dkt. No. 26.

IT IS SO ORDERED.

Dated: 8/3/2020



HAYWOOD S. GILLIAM, JR.
United States District Judge